

# JOHN ADAMS AND THE MASSACHUSETTS CONSTITUTION

(Second President of the United States, 1797-1801;  
Primary Author of the Constitution of the Commonwealth of Massachusetts, 1779)

## A. JOHN ADAMS: BIOGRAPHICAL SUMMARY

**Birth:** October 30, 1735, in Braintree, Massachusetts.

**Death:** July 4, 1826, in Quincy, Massachusetts.

**Education:** Harvard College (graduated in 1755).

**Family:** Married to Abigail Smith Adams in 1764.

Children:

- Abigail (Nabby) Amelia Adams Smith (1765-1813)
- John Quincy Adams (1767-1848) (Sixth President of the United States, 1825-1829)
- Susanna Adams (1768-1770)
- Charles Adams (1770-1800)
- Thomas Boylston Adams (1772-1832)

**Legal Career:**

- Admitted to Massachusetts Bar (1758)
- Appointed to defend British captain and soldiers indicted for murder following the Boston Massacre of March 5, 1770
- Founder and First Secretary, Suffolk County Bar Association (1770)
- Chief Justice of the Superior Court of Judicature, the predecessor to the Supreme Judicial Court (1775-1778), but obligations in Philadelphia prevented his ever presiding over the Court.

**Political Career:**

- Elected to Massachusetts Assembly (1770)
- Selected as delegate to First and Second Continental Congresses (1774-1776)
- Proposed George Washington as commander-in-chief of the Continental armies (1775)
- Member of Committee assigned to draft the Declaration of Independence (1776)
- Signed Declaration of Independence (1776)
- Commissioner to France (1777-1779)
- Delegate to Massachusetts Constitutional Convention and principal author of the Massachusetts Constitution (1779)

- Minister plenipotentiary to negotiate treaties of peace and commerce with Great Britain (1780)
- Diplomat to Holland and France (1781-1784)
- United States Ambassador to Great Britain (1785-1788)
- Elected first Vice President of the United States (1789-1797)
- Elected second President of the United States (1797-1801).  
Presidential Acts included nomination of John Marshall to be Chief Justice of the United States Supreme Court (1801)
- Delegate to the Massachusetts Constitutional Convention of 1820

### **Political Philosopher and Author:**

Adams was a prolific author. In addition to his famous diaries and letters, major works include:

- A Dissertation on the Canon and Feudal Law (1765)
- Novanglus Letters (1774-1775)
- Thoughts on Government (1776)
- A Defense of the Constitutions of Government of the United States (1786-1787)
- Discourses on Davila (1791)

### **Other**

- Charter member and founder of the American Academy of Arts and Sciences (1780)

## **B. THE MASSACHUSETTS CONSTITUTION**

### **1. Introduction: Why Study the Massachusetts Constitution**

The 1780 Constitution of the Commonwealth of Massachusetts, drafted by John Adams, is the world's oldest functioning written constitution. It served as a model for the United States Constitution, which was written in 1787 and became effective in 1789. (The Bill of Rights to the United States Constitution were approved in 1789 and became effective in 1791). In turn, the United States Constitution has, particularly in years since World War II, served as a model for the constitutions of many nations, including Germany, Japan, India and South Africa. The United States Constitution has also influenced international agreements and charters, including the Universal Declaration of Human Rights.

In 1915, the President of the American Historical Association stated, "If I were called upon to select a single fact or enterprise which more nearly than any other single thing embraced the significance of the American Revolution . . . I should choose the

formation of the Massachusetts Constitution of 1780. . . .”<sup>1</sup>

## **2. John Adams and the Rule of Law**

### **a. The Writs of Assistance Case (1761)**

Among the most profound influences on the young John Adams was his witnessing attorney James Otis arguing the Writs of Assistance case in 1761.<sup>2</sup> This case would influence Adams years later when, in drafting the Massachusetts Constitution, he included a strong prohibition against unreasonable searches and seizures. That provision ensures that articulated and established rules are followed before private property may be searched or seized by government officials.

The Writs of Assistance case originated in 1760. Soon after George III ascended to the English throne, customs officials began aggressively to inspect ships, businesses, and homes for evidence of goods smuggled into Massachusetts by merchants seeking to avoid taxes. To conduct a search, customs officials needed only to obtain a “writ of assistance,” a general search warrant that allowed them to search within any identified premises. The government was not required to make any showing of cause before obtaining a writ.

In February 1761, Otis represented a group of Massachusetts merchants who challenged the legality of the writs in a case brought before the Superior Court of Judicature. For five hours, Otis argued that the writs violated the inalienable rights of the colonists as British subjects: “A man’s house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege.”<sup>3</sup>

Chief Justice Hutchinson delayed the Court’s decision, likely hoping that public sentiment against the writs would subside. Though the Court did eventually uphold the writs, Adams believed that customs officials never “dared” to execute them.

Otis’s argument against arbitrary and excessive power influenced many, including 25-year-old John Adams, who later recalled, “Every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the

---

<sup>1</sup> The Honorable Margaret Marshall, *Foreword*, Boston Bar Journal (January/February 2000) (quoting Andrew McLaughlin, *American History and American Democracy*, 20 Proceedings of the American Historical Society 225 (1915)).

<sup>2</sup> See generally, Chief Justice Edward F. Hennessey, “Who was James Otis, Jr.?” 77 Mass. Law Review 31-33 (1992); Adams’s quotations in this section are found in his *Life and Works*, 10:248.

<sup>3</sup> Otis’s entire argument to the Court is available at [http://www.constitution.org/bor/otis\\_against\\_writs.htm](http://www.constitution.org/bor/otis_against_writs.htm).

arbitrary claims of Great Britain. Then and there, the child Independence was born.”<sup>4</sup>

## **b. The Boston Massacre Case**

The Boston Massacre case demonstrates John Adams’s deep and abiding respect for a legal system based on the rule of law.<sup>5</sup> For in this case, John Adams was requested to – and did – defend British soldiers who had fired into a mob of unruly colonists.

Events began on March 5, 1770, when tensions were high between the colonists and the armed British soldiers stationed in Boston. That evening, a dispute between a British sentry and a colonist led to the gathering of a disorderly crowd of colonists which, eventually, confronted Captain Thomas Preston and eight British soldiers.

When the volatile crowd refused orders to disperse and threw objects at the soldiers, the soldiers shot into the crowd, killing five colonists, including Crispus Attucks. Captain Preston and the soldiers were arrested.

The following day, John Adams was asked to defend Captain Preston and the soldiers from anticipated indictments. Adams agreed.<sup>6</sup> Though committed to freedom from British tyranny, he believed that those accused deserved a proper defense. Adams’s decision to defend the accused was particularly noteworthy as other patriots, including his cousin Samuel Adams and Paul Revere, who invoked what they now named the “Boston Massacre” to inflame anti-British sentiments.<sup>7</sup>

Captain Preston’s trial was held first, from October 24-30, 1770. Adams’s strategy was to challenge the prosecution’s claim that Preston had ordered his soldiers to fire. Adams succeeded, and the jury acquitted Preston.

---

<sup>4</sup> *Life and Works*, 10:248

<sup>5</sup> Much of the material in this section is drawn from the Boston Public Library’s exhibit, “Riot and the Rule of Law: The Boston Massacre, John Adams and the Trial of 1770,” on display from January 14-March 6, 2005. See also The Honorable Hiller Zobel, *The Boston Massacre* (1996); McCullough, *John Adams* 65-68 (2001). See also <http://www.law.umkc.edu/faculty/projects/ftrials/bostonmassacre/bostonmassacre.html> for an extensive online collection of materials and accounts of this trial, including John Adams’s closing argument in the soldiers’ trial.

<sup>6</sup> Attorney Josiah Quincy assisted Adams in his role as defense counsel.

<sup>7</sup> Patriot-created propaganda included Revere’s famous engraved print depicting British soldiers shooting into a crowd of unarmed colonists. See <http://www.law.umkc.edu/faculty/projects/ftrials/bostonmassacre/massacrereverelarge.jpg>

The subsequent trial of the eight soldiers was transcribed and published. After calling over forty witnesses, Adams gave an “electrifying” closing argument in which he argued that the soldiers had acted in self-defense when facing a mob. He further contended that because the evidence was unclear as to which soldiers had fired, it was better for the jury to acquit all eight defendants than mistakenly to convict one innocent man. “The reason is, because it’s of more importance to community, that innocence should be protected, than it is, that guilt should be punished.”<sup>8</sup>

The jury acquitted six soldiers and found two guilty of manslaughter; those two had been clearly proved to have fired shots.<sup>9</sup>

For his role in the trials, Adams received serious public criticism and lost a substantial portion of his law practice. Later, he would write:

The part I took in defense of Cptn. Preston and the Soldiers, procured me anxiety, and obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested actions of my whole life, and one of the best pieces of service I ever rendered my country. Judgement of death against those soldiers would have been as foul a stain upon this country as the executions of the Quakers or Witches, anciently. As the evidence was, the verdict of the jury was exactly right.<sup>10</sup>

As reflected in observations of the Writs of Assistance case and his own role in the Boston Massacre trials, Adams had a passionate commitment to the rule of law and the right of all to fair proceedings. These passions would guide Adams as he developed and articulated his philosophy of a government based on laws not men.

### 3. Thoughts on Government

In a brief essay entitled *Thoughts on Government*<sup>11</sup>, written during the early spring of 1776, John Adams articulated the central points of his philosophy of government. In formulating his vision, Adams relied on his vast reading of enlightenment political theory (e.g., Locke’s *Two Treatises of Government* and Montesquieu’s *The Spirit of the Laws*) and his study of ancient and modern history (e.g., Ancient Athens and Sparta, Republican and Imperial Rome, English and European history), as well as his firm belief that history had presented him and the other colonists

---

<sup>8</sup> McCullough at 68.

<sup>9</sup> The two convicted soldiers invoked “the benefit of clergy,” a plea that reduced their punishment to the branding of their thumbs.

<sup>10</sup> Adams, *Legal Papers III* (ed. Zobel and Wirth 1966) at 33.

<sup>11</sup> *Thoughts on Government* is available online at:  
[www.teachingamericanhistory.org](http://www.teachingamericanhistory.org).

with an unmatched opportunity to form their own governments as free and independent states.

You and I . . . have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children! When, before the present epoch, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive?

Adams believed that a stable and democratic government required the consent of the governed and the separation of powers among the executive, legislature, and judiciary, and a bicameral (two-body) legislature.<sup>12</sup> Of the necessity for an independent judiciary, Adams wrote:

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law.

The constitutional framework articulated in *Thoughts on Government* influenced the constitutions drafted in many of the colonies, including Massachusetts.<sup>13</sup>

---

<sup>12</sup> In *Thoughts on Government*, Adams was in part responding to Thomas Paine's pamphlet *Common Sense*, published in January 1776. Though agreeing with Paine's call for American independence, Adams was disturbed by Paine's "feeble" understanding of constitutional government and his view that a unicameral legislature would provide an adequate foundation for government. David McCullough, *John Adams* 96-97 (2001).

<sup>13</sup> Gordon Wood, *The Creation of the American Republic: 1776-1878* 306-343(ed. 1998).

#### **4. Adams's Resolution Authorizes the Colonies to Establish Legitimate and Independent Governments**

Also in the spring of 1776, the Second Continental Congress, meeting in Philadelphia, responded to John Adams's insistence that if independence were to be declared, the colonies must establish legitimate and independent governments. On May 10, 1776, the Second Continental Congress adopted Adams's resolution (advanced with Richard Henry Lee of Virginia) recommending that each of the "united colonies" assume the powers of government and "adopt such a government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."<sup>14</sup>

When the Declaration of Independence was adopted on July 2, 1776, this task became more urgent.

#### **5. Massachusetts Invents the Constitutional Convention**

In 1777, the Massachusetts legislature announced that the next legislature would draft a new constitution which it would then submit to the voters for approval. (At this time, John Adams was serving as a diplomat to France; Congress had appointed him to solidify this crucial alliance.)

In reaching its decision, the Massachusetts legislature failed to heed Adams's recommendation that constitutions ought to be drafted and ratified by special conventions representing the consent of the people.<sup>15</sup> During the fall of 1775, Adams had recommended that the people must "erect the whole Building with their own hands upon the broadest foundation. That this could be done only by conventions of representatives chosen by the People. . . ."<sup>16</sup>

The legislature's proposed constitution was submitted to, and rejected by, the voters in 1778. Theophilus Parsons, a young lawyer who would later become Chief Justice of the Massachusetts Supreme Judicial Court, led the opposition. In a pamphlet entitled *The Essex Result*<sup>17</sup>, Parsons, in words demonstrating the influence of

---

<sup>14</sup> See McCullough, *supra* note 3 at 108-110; Richard Bernstein, *The Revolution and State Constitution-Making and Legal Reform* (available at <http://revolution.h-net.msu.edu/essays/bernstein.constitutions.html>).

<sup>15</sup> Adams was the first American advocate of constitutional conventions. See C. Bradley Thompson, *John Adams and the Spirit of Liberty* 40-41 (1998).

<sup>16</sup> John Adams Family Papers, June 2, 1775; available from the Adams Electronic Archive, [www.masshist.org/digital](http://www.masshist.org/digital) .

<sup>17</sup> The Essex Result is available online at <http://www.usconstitution.com/EssexResult.htm>

John Adams, criticized the proposed constitution for not having been drafted by a body separate from the legislature, for lacking a declaration of rights (and for explicitly condoning slavery), and for failing to provide for the separation of powers among the executive, a bicameral legislature, and the judiciary.

In 1779, the Massachusetts legislature issued a call to the towns for every male inhabitant to elect representatives to form a Convention for the sole purpose of framing a new Constitution, which would then require ratification by two-thirds of the same electorate. Massachusetts thereby invented the concept of convening a convention of the people, separate and apart from the legislature, for the sole purpose of creating a constitution. Massachusetts thus created and clarified the distinction between ordinary legislation and the fundamental law contained in a constitution, which may be created and changed only by “the people.”<sup>18</sup>

## **6. John Adams Drafts the Massachusetts Constitution**

In August 1779, one week after he had returned from France to his home in Braintree, that town selected Adams as a delegate to the state constitutional convention, scheduled to meet on September 1.

The 312 delegates selected John Adams, Samuel Adams, and James Bowdoin to serve on the drafting committee, and “the other two picked [John] Adams to draw up the state’s constitution. He had become, as he later said, a sub-sub committee of one.”<sup>19</sup> In drafting the Massachusetts Constitution, Adams drew upon his vast knowledge of history and political philosophy, the colonies’ experiences under British colonial rule, and his own ideas as articulated in *Thoughts on Government*. Adams completed his draft by October 30, 1779. He left Massachusetts in November 1779 to return to Europe as minister plenipotentiary.

Following approval by town meetings, the Constitution was ratified on June 15, 1780, and became effective on October 25, 1780.

## **7. The Massachusetts Constitution**

The Massachusetts Constitution contains three parts: a Preamble, Part the First: A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, and Part the Second: The Frame of Government.

---

<sup>18</sup> Wood, *supra* note 4 at 342 (describing a constitutional convention as an “extraordinary invention,” perhaps “the most distinctive institutional contribution the American Revolutionaries made to Western politics”).

<sup>19</sup> McCullough, *supra* note 3 at p. 220.



### **a. The Preamble:**

- announces the purposes of government; that is, furnishing the members of the body politic "the power of enjoying, in safety and tranquility, their natural rights and the blessings of life;
- describes the "body politic" as a "social compact" whereby all agree to be governed by laws designed for the "common good;"
- provides that when government does not fulfill its obligations, "the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness."

### **b. The Declaration of Rights**

The Declaration of Rights, which was in part derived from the Bill of Rights in several other state constitutions, sets forth many individual rights which would later be included in the federal Bill of Rights. John Adams considered individual rights so integral to the formation of government that the Massachusetts Declaration of Rights *precedes* the Frame of Government. (Contrast this with the United States Constitution which sets forth a frame of government, to which the Bill of Rights was *added* two years later, after prolonged debate.) The Declaration of Rights includes prohibitions against unreasonable searches and seizure, ex post facto laws, and the public taking of private property without just compensation. Protected rights include freedom of the press, the right to petition the government, right to trial by jury, and freedom of worship.

The Declaration of Rights also established an independent judiciary. Adams knew that a free people and a stable government required judges "as free, impartial and independent as the lot of humanity will admit," who serve "as long as they behave themselves well" and whose salaries are "established by standing laws." Article XXIX brings to fruition arguments made by Adams in *Thoughts on Government* and in a series of argumentative essays written in 1773 between Adams and loyalist General William Brattle. In those essays, Adams contended that colonial judges, who served at the pleasure of the Crown, were "far from independent."<sup>20</sup>

The Declaration of Rights concludes with an inspiring commitment to the creation of a balanced government of separate powers: a government of laws, not men:

In the government of the commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws, and not of men. (Article XXX)

---

<sup>20</sup> These essays are available online at <http://oll.libertyfund.org/ToC/0077.php>

### **c. The Frame of Government**

The Frame of Government establishes a government of separate powers comprised of three branches: an executive, a bicameral legislature, and an independent judiciary. The structural framework adopted in Massachusetts is identical to that adopted in the United States Constitution.<sup>21</sup>

### **C. Abigail Adams**

Throughout their fifty-four year marriage, Abigail Adams was her husband's most trusted advisor on the subjects of family, career, and politics. Because Adams's political life resulted in lengthy absences from his wife, they regularly communicated through letters. This massive collection of letters has made Abigail one of this nation's best known and most beloved women.<sup>22</sup>

In Abigail's most famous letter, dated March 31, 1776, she writes to John of her desire that members of the Continental Congress "remember the ladies" when they create a new code of law:

I long to hear that you have declared an independency – and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Laidies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

In addition to championing the cause of women, Abigail also championed freedom for slaves. On September 22, 1774, she wrote:

I wish most sincerely there was not a Slave in the province. It allways appeard a most iniquitious Scheme to me – fight ourselves for what we are daily robbing and plundering from those who have as good a right to freedom as we have. You know my mind upon this Subject.

---

<sup>21</sup> Additionally, within the fifteen years following adoption of the Massachusetts Constitution, nearly every state adopted Massachusetts' overall structure of government. In contrast, some earlier state constitutions, such as Pennsylvania's, had a one-house legislature and an executive and judiciary fully created and controlled by the legislature. See Bernstein, *supra* note 3.

<sup>22</sup> For an extensive electronic collection of these letters, see <http://www.masshist.org/digitaladams/aea/index.html>.

Years later, Abigail would support the right of an African-American child to attend school with white children. In 1797, Abigail enrolled a young African-American servant boy in a local school. When a neighbor reported objections, Abigail responded as follows, as recounted in her letter to her husband dated February 13, 1797:

[The neighbor, Mr. Faxon] inform me that if James went to School, it would break up the School for the other Lads refused to go. Pray Mr. Faxon has the Boy misbehaved? If he has let the Master turn him out of school. O no, there was no complaint of that kind, but they did not chuse to go to School with a Black Boy. . . This Mr. Faxon is attacking the principle of Liberty and equality upon the only Ground upon which it ought to be supported, an equality of Rights. The Boy is a Freeman as much as any of the young Men, and merely because his Face is Black, is he to be denied instruction? How is he to be qualified to procure a livelihood? . . . Tell them Mr. Faxon that I hope we shall all go to Heaven together. Upon which Faxon laugh'd, and thus ended the conversation. I have not heard any more upon the subject.